THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13894 OF 2006

ORAL ORDER:

This writ petition is filed seeking a declaration that the sale notification dated 8.6.2006 issued by the 3rd respondent-Bank in the local dailies proposing to auction immoveable properties belonging to the petitioners situated in Sy.No.96 of Tunglam village, Gajuwaka Municipality, Visakhapatnam district as arbitrary and illegal, apart being violative of the principles of natural justice.

As can be seen from the affidavit filed in support of the writ petition, the 4th respondent-Company availed financial assistance from the 3rd respondent-Bank, for the purpose of which, the properties in question, belonging to the petitioners were given as security.

It is not in dispute that the 4th respondent-Company committed default in repayment of the loan and, consequently, the loan account was classified as non-performing asset. Pursuant there to, the 3rd respondent-Bank initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") which culminated in the impugned auction notice dated 8.6.2006. The said notice is questioned in this writ petition primarily on the ground that the lands in question being agricultural lands are outside the purview of the Act by virtue of Section 31 of the Act. It is also contended that the petitioners herein were not served with notice under Section 13(2) of the Act and there was no opportunity for them to raise their objections.

On behalf of the 3rd respondent-Bank a detailed counter-affidavit has been filed denying the plea of the petitioners that the lands in questions are agricultural lands. It is stated that the loan account of the 4th respondent-Company was classified as non-performing asset on 30.7.2003 and, thereafter, notice under Section 13(2) of the Act was

issued on 23.2.2004 calling upon the borrowers to pay the outstanding debt. Such notice was also served on the petitioners and the same was acknowledged by them on 28.4.2004; 15.3.2004; 12.5.2004; 15.3.2004 and 15.3.2004, respectively. Since there was no response, possession was taken on 17.10.2005 following due process of law and public notice was issued in the local dailies proposing to auction the properties on 10.7.2006. Thus, it is pleaded that the entire action of the respondents is in accordance with law and the interference by this Court is not warranted.

Heard the learned counsel for both the parties.

From the material on record, it is clear that the plea of the petitioners that the lands in question are agricultural lands is being disputed by the respondents. Similarly, the allegation of the petitioners that notice under Section 13(2) of the Act was not served on them has been denied in the counter affidavit. Such disputed questions of fact cannot be enquired into and decided by this Court in a writ proceeding and it would have been proper for the petitioners to avail the alternative remedy available under Section 17 of the Act by making an application before the Tribunal having jurisdiction. In the circumstances, though the *writ of mandamus* as prayed for cannot be granted, the writ petition is disposed of granting leave and liberty to the petitioners to work out the remedy available under Section 17 of the Act, if so advised. No costs.

(G. ROHINI, J.)

22nd January, 2007.
Issue CC in two days
Kgr.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13894 OF 2006

22nd January, 2007.

Between:

D. Venkata Simhadri Raju and others. .. Petitioners.

And

Central Bank of India, represented by its
Managing Director, Mumbai and others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.13894 OF 2006

22nd January, 2007.